

# Guatemala: Political Conditions, Elections, and Human Rights

August 12, 2004

Congressional Research Service

<https://crsreports.congress.gov>

RL32124



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## Guatemala: Political Conditions, Elections, and Human Rights

Since the 1980s, Guatemala has been consolidating its transition from a centuries-long tradition of mostly autocratic rule toward representative government. A democratic constitution was adopted in 1985, and a democratically-elected government was inaugurated in 1986. Democratic institutions remain fragile. A 36-year civil war ended in 1996 with the signing of the Peace Accords between the government and the left-wing guerrilla movement. The accords not only ended the civil conflict, but constituted a blueprint for profound political, economic, and social change to address the conflict's root causes. They outline a profound restructuring of state institutions, with the goals of ending government security forces' impunity from prosecution, consolidating the rule of law; shifting government funding away from the military and into health, education, and other basic services to reach the rural and indigenous poor; and the full participation of the indigenous population in local and national decision making processes. From 1997-2003, U.S. assistance to Guatemala focused on support of the peace process. Aid has declined from about \$60 million in FY2002 to \$38 million requested for FY2005. In the conference report for the FY2004 omnibus appropriations bill (H.Rept. 108-401), Congress criticized the Administration's strategy of reducing staffing and funding for Guatemala. Current conditions on aid are in P.L. 108-199; proposed legislation related to Guatemala includes H.R. 1300; H.R. 2534; and S.Res. 289.

Former Guatemala City mayor Oscar Berger of the center-right coalition Great National Alliance was elected president with 54% of the vote and inaugurated on January 14, 2004, for a four-year term. Since taking office, he has pursued corruption charges against his predecessor, Alfonso Portillo, of the Guatemalan Republican Front (FRG), and other former FRG officials. Berger has also proposed military reforms including cutting troops by a third, slashing defense spending, and modernizing defense policy. His proposed economic reforms include new income tax rates and a temporary tax to fund programs related to the peace process.

Despite his decisive loss in the first round presidential elections, retired General Efraín Ríos Montt remains a divisive force. Berger's top defense official, General Otto Pérez, resigned in May to protest negotiations between Berger officials and the FRG, of which Ríos Montt is still leader. Ríos Montt was military dictator from 1982-1983, while the army carried out a counter-insurgency campaign resulting in what is now characterized as genocide of the Mayan population.

Regarding respect for human rights, Guatemala has made enormous strides, but significant problems remain. The armed conflict is definitively ended, and the state policy of human rights abuses has been ended. On the other hand, strengthening of civilian power over military forces is slow, and security forces reportedly continue to commit gross violations of human rights with impunity. The U.N., the OAS, and the United States have all expressed concern that human rights violations have increased over the past several years, and that past Guatemalan governments have taken insufficient steps to curb them or to implement the Peace Accords. This report may be updated as events warrant.

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# Guatemala: Political Conditions, Elections, and Human Rights

## Political Background

Since the 1980s, Guatemala has been consolidating its transition from a centuries-long tradition of mostly autocratic rule toward representative government. A democratic constitution was adopted in 1985, and a democratically-elected civilian government inaugurated in 1986. Eighteen years later, democratic institutions remain fragile. Of all the conflicts that ravaged Central America in the last decades of the 20<sup>th</sup> century, Guatemala's conflict lasted the longest. Guatemala ended its 36-year civil war in 1996, with the signing of the Peace Accords between the government and the Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca, URNG), a group created in 1982 from the merger of four left-wing guerrilla groups. Some of these groups were inspired by the ideologies of the Cuban and Nicaraguan revolutions and by liberation theology. Some had bases in the highlands with a mostly indigenous population and incorporated the historical grievances of the Mayans into their agendas for social and economic reform.

The accords not only ended the civil conflict, but constituted a blueprint for profound political, economic, and social change to address the conflict's root causes. Embracing 10 other agreements signed from 1994 to 1996, the accords call for a one-third reduction in the size and budget of the military; major investments in health, education, and other basic services to reach the rural and indigenous poor; and the full participation of the indigenous population in local and national decision making. They require fundamental changes in tax collection and government expenditures, and improved financial management. The accords also outline a profound restructuring of state institutions, especially of the military, police, and judicial system, with the goal of ending government security forces' impunity from prosecution and consolidating the rule of law.

Former President Alfonso Portillo, of the Guatemalan Republican Front (FRG), whose four-year term just expired, took office in January 2000 following elections generally regarded as free and fair. Upon taking office, President Portillo embraced the Peace Accords and declared them to be state policy for his Administration. Portillo survived the revelation made by the Guatemalan press during the presidential campaign that he had fatally shot two men in Mexico in 1982, and had been a fugitive from justice until a Mexican judge declared the case inactive in 1995. Portillo admitted to having committed the murders, and said they were in self-defense.<sup>1</sup> He went on to win by a large margin in runoff elections, with some analysts concluding that voters had "overlooked Portillo's personal background in

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<sup>1</sup> Ricardo Miranda, "Mexico Killings Haunt Guatemala Candidate," Reuters, Sept. 9, 1999.

exchange for his promises to rule in favor of rural peasants and working-class Guatemalans.”<sup>2</sup> Portillo was widely criticized for inadequate implementation of the peace process, and increases in human rights violations, drug trafficking, and common crime. He was also criticized for allegedly extensive corruption in his Administration. Transparency International said Guatemala was perceived as the 33<sup>rd</sup> most corrupt country out of 133 countries in 2003.<sup>3</sup> In the economic realm, growth slowed during his Administration, and unemployment rose. Although Portillo initially reduced the government’s deficit spending, reducing the budget by an average of 10%, he then resumed deficit spending.

Oscar Berger (pronounced ber-SHAY), of the Great National Alliance (Gran Alianza Nacional, GANA), a recently formed and fractious coalition of center-right parties, was inaugurated President on January 14, 2004. Berger’s election ends the dual-party dominance of the PAN and FRG that has characterized Guatemalan national politics in recent years. Berger has promised to make fulfilling the Peace Accords a central theme of his administration. He says signing a free-trade agreement with the United States is a top priority and that he plans to stimulate the economy by encouraging private investment.

While noting that insufficient enactment of peace accord reforms are mainly the responsibility of the government, the United Nations Verification Mission in Guatemala (MINUGUA) states that civil society also bears responsibility for fulfilling the accords. [Guatemala requested a U.N. mission in 1994 in the Guatemalan Comprehensive Agreement on Human Rights, the first of the Peace Accords, to verify human rights and compliance with the commitments of that agreement.] In its May 2003 report, MINUGUA criticized the organized private sector for systematically opposing efforts to increase taxes, preventing Guatemala from reaching the minimum target set in the Peace Accords of a tax base equal to 12% of Gross Domestic Product, and thereby limiting funding available for key social ministries and institutions of justice.

## **November 2003 Elections**

Guatemalans elected a new president, legislature, and other officials in 2003. Elections were held on November 9, but because no presidential candidate received over 50% of the vote, a run-off election between the top two candidates was held on December 28. A second-round election has been required in every presidential election since 1985. Oscar Berger won with 54% of the vote. Berger was mayor of Guatemala City from 1990 to 1999; a lawyer, rancher, and owner of travel agencies, he is considered pro-business. Alvaro Colom of the left-of-center National Unity of Hope (Unidad Nacional de la Esperanza, UNE), lost with 46%. Colom, who once ran as a candidate for the party associated with Guatemala’s leftist guerrillas, had moved toward more centrist politics with UNE. The Guatemalan constitution prohibited President Portillo from running for re-election. The new president was inaugurated in January 2004 for a four-year term.

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<sup>2</sup> “Guatemala’s Portillo to Assume Presidency,” Reuters, Jan. 14, 2000.

<sup>3</sup> Transparency International Corruption Perceptions Index 2003, at [<http://www.transparency.org/cpi/2003/cpi2003.en.html>] .

Voters elected all 158 members of the unicameral Congress, 20 members of the Central American Parliament, and 331 mayors and municipal councils. In the Congressional elections, GANA won just under one-fourth of the seats, with 49; FRG won 42 seats; UNE won 33; and the National Advancement Party (Partido de Avanzada Nacional, PAN) won 16 seats. 80 seats constitute the majority needed to pass legislation. Berger negotiated a governing coalition with Colom's party and his former party, PAN, which creates a 96-seat majority in the legislature.

Some observers believe that of equal or greater importance is who did not run in the second round: retired General Efraín Ríos Montt, of the FRG, whose nomination generated much controversy, received only 19% in the first round presidential election. Ríos Montt's candidacy caused great concern among the international community, much of Guatemalan society, and human rights organizations. Ríos Montt, age 77, took power through a coup and was military dictator from 1982-1983, while the army carried out a counter-insurgency campaign resulting in what the Guatemalan Truth Commission has now characterized as genocide of the Mayan population. He founded the FRG, and was president of the Guatemalan Congress until he stepped down in August 2003 to focus on his election campaign. The FRG named Ríos Montt its presidential candidate despite a provision in the constitution that bans participants in military coups from running for president and that prevented his running twice before. After the Supreme Court temporarily suspended Ríos Montt's candidacy, FRG-hired gangs launched violent protests. Guatemala's highest court, the Constitutional Court, decided in late July to allow Ríos Montt's candidacy, supporting his argument that he carried out his coup before the Constitution was written, and therefore the prohibition against running should not apply to him. The decision was criticized as illegal by some Supreme Court justices, and further polarized the electorate. Two appeals by opposition parties were dismissed on September 12.

Although Ríos Montt was far behind in polls prior to the election, some analysts believed that an electoral victory by Ríos Montt could not be ruled out because of targeted spending by the FRG government, strong rural support, and concerns that the FRG would use fraud to guarantee re-election. Then-President Portillo, who is also Ríos Montt's son-in-law, was said to be putting the "full weight of the government machine behind his party's contender."<sup>4</sup> According to Amnesty International, prior to the first-round elections, the electoral process had already been "manipulated via pressure, threats, violence, terror, intimidation, and improper use of state and municipal resources," and more manipulation, along with "falsification or alteration of electoral rolls and election results" was likely to occur.<sup>5</sup>

Press reports indicate that election-related violence between July and October led to the deaths of 21 candidates and activists, most of whom were members of

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<sup>4</sup> *Guatemala Country Report*, The Economist Intelligence Unit, Sept. 2003, and *Guatemala: Ríos Montt candidacy raises fears*, Oxford Analytica Daily Brief, Aug. 29, 2003, at [<http://www.oxweb.com/default.asp?URL=%2F&Timeout=1>].

<sup>5</sup> *Guatemala: Legitimacy on the Line: Human Rights and the 2003 Guatemalan Elections*(report), Amnesty International, Sept. 19, 2003.

opposition parties.<sup>6</sup> An election-monitoring umbrella group, Mirador Electoral 2003, called the electoral process leading up to the November elections the most violent in Guatemala since electoral rule was restored in 1986.<sup>7</sup>

A coalition of grassroots organizations and advocacy groups formed a “civic front for democracy” in August to guard against fraud during the remaining election process. An OAS election observation mission began operating in Guatemala months before the November election, with other groups joining in the observation efforts closer to the polling date. Observers reported the second round elections to be relatively peaceful and free of fraud.

Although Rios Montt lost, analysts are concerned that he will continue to be a destabilizing element. He resigned from Congress to run and thereby lost the parliamentary immunity that protected him from indictment proceedings in Guatemala. Rios Montt also has indictments against him in Spain and Belgium. He now faces possible prosecution on charges of genocide and other offenses allegedly committed during his de facto regime. Opposition to such prosecution could come from his network of supporters in the military, judiciary, and legislature — which includes his son, the former army chief of staff, and his daughter, who was vice president of the Congress. President Berger has been unclear on whether he will allow genocide charges against the former general to proceed.

Nonetheless, some observers believe that the repudiation of Rios Montt in the November polls, in which almost three-fourths of eligible voters cast ballots, represents a significant step forward in Guatemala’s efforts to strengthen democracy and respect for human rights.

## Socio-Economic Background<sup>8</sup>

Guatemala has the largest population in Central America: 12 million people. Approximately half the population is indigenous, with about 23 different ethno-linguistic groups. The indigenous population is economically and socially marginalized and subject to significant ethnic discrimination. Distribution of income and wealth remains highly skewed in Guatemala. According to a recent World Bank report, Guatemala ranks among the more unequal countries of the world, with the top 20% of the population accounting for 54% of total consumption. Indigenous people — constituting about 50% of the population — account for less than 25% of total income and consumption.

According to the World Bank’s recent Poverty Assessment of Guatemala, past policies seeking to promote economic growth have resulted in the exclusion and

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<sup>6</sup> Hazel Feigenblatt, “Despot’s Return Stirs up Violence,” *Washington Times*, Oct. 18, 2003.

<sup>7</sup> “OAS Mission Chief Demands Security,” *Latin American Weekly Report*, Sept. 30, 2003.

<sup>8</sup> Socio-economic data in this section are primarily from: *Guatemala Poverty Assessment*, The World Bank, February 2003; and *Background Note: Guatemala*, U.S. Department of State, Sept. 2003.

impoverishment of the indigenous population. Massive land expropriations, forced labor, and exclusion of the indigenous from the educational system all served to develop coffee as Guatemala's primary export crop yet inhibit development among the indigenous rural population. By 1960, Guatemala had double the per capita Gross Domestic Product (GDP) of neighboring Honduras and Nicaragua, but lower social indicators.

This remains the case today. Guatemala's per capita GDP is \$3,630, in the mid-range internationally. Its total GDP, \$20.5 billion, is the largest in Central America. Yet the World Bank says data suggest that poverty is higher in Guatemala than in other Central American countries. Estimates of the portion of Guatemala's population living in poverty vary: the U.S. State Department reports that 80% of Guatemalans live in poverty, with two-thirds of that number living in extreme poverty. The World Bank reports that 54% of the population lives in poverty, with indications that poverty has increased slightly in 2001-2002.<sup>9</sup> Poverty is highest in rural areas and among the indigenous: 75% of all people living in the countryside live in poverty, and 25% in this category live in extreme poverty. Poverty is significantly higher among indigenous people, 76% of whom are poor, in contrast to 41% of non-indigenous people.

Guatemala's GDP for 2001 was \$22 billion. GDP growth rate was 3.3% in 2000, 2.1% in 2001, and 2.3% in 2002. Low worldwide coffee prices contributed to Guatemala's slowed growth over the last couple of years. Despite the downturn in commodity prices, traditional exports such as coffee and sugar continue to lead Guatemala's economic growth. Over the last decade, non-traditional exports, such as assembled clothing, winter fruits and vegetables, furniture, and cut flowers, have grown dramatically. Tourism also has grown, though continued growth may depend on the government's ability to address security issues. Problems limiting growth include illiteracy and low levels of education, high crime rates, and an inadequate capital market.

The 36-year civil war generated social and economic costs. Economic growth rates did not fall until the height of the conflict in the 1980s. But cumulatively, from 1960 to 1996, the war entailed significant loss of life, jobs, and productivity, and caused disruption, especially in the hard-hit rural areas. Guatemala's social indicators continue to be among the worst in the hemisphere; its malnutrition rates are among the worst in the world. Its infant mortality rate is 43 per 1,000 live births, and its under-5 mortality rate is 58 per 1,000 children.<sup>10</sup> Guatemala's illiteracy rate is extremely high: at 31%, only Nicaragua and Haiti have worse levels in Latin America and the Caribbean. The average level of schooling is an extremely low, 4.3 years; among the poor it is less than two years. Schooling is lowest among women, indigenous people, and the rural poor. As a result of malnutrition, 44% of children under five years of age have stunted growth. Drought and low coffee prices triggered a rural economic crisis beginning in 2001, which has caused severe malnutrition among the rural poor.

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<sup>9</sup> The difference in the figures is probably due to methodology.

<sup>10</sup> *Guatemala Country Profile*, The World Bank Group, August 2003.



Throughout the Peace Accords, there are provisions seeking to reverse the historical exclusion of indigenous peoples and women. In signing them, the Guatemalan government agreed to implement a more inclusive development strategy. It also agreed to increase investment of the national budget in education, health, and other social sectors in order to create more equitable distribution of wealth, reduce poverty, improve living conditions of the poor, and increase access to education, health, and other social services.

Implementation of the elements of the Peace Accords relating to improving the living conditions and the rights of indigenous people and women are far behind schedule, however. Access to education, according to the Inter-American Commission on Human Rights, is “still far from becoming a reality.” The Portillo Administration outlined a poverty reduction strategy in 2002 addressing most of those issues. MINUGUA reported in 2003 that there were slight improvements in social spending in the national budget over the previous year but that the amounts allocated to key social ministries “remained extremely low in relation to the needs of the country.” The indigenous population and women continue to face limited opportunities and discrimination in the labor market. According to the World Bank’s Poverty Assessment, “The indigenous appear limited to lower-paying jobs, primarily in agriculture,” which, the report says, is “unlikely to serve as a major vehicle for poverty reduction.” Other obstacles hindering social and economic advancement among the indigenous poor, which the report says the government still must address, are higher malnutrition rates, less coverage by basic utility services, wage discrimination, and discriminatory treatment by public officials and other service providers.

International donors and others have criticized Guatemala for not increasing the tax base to the minimum target of 12% of Gross Domestic Product (GDP) agreed upon in the Peace Accords. At a May 2003 meeting of the Consultative Group for Guatemala, donors told the Guatemalan government it needed to increase its tax revenue, decrease spending on the armed forces, and increase social spending as mandated in the accords. The Consultative Group is made up of over 20 donor countries and international organizations, including the U.S., Canadian, and Japanese governments, the World Bank, and the IDB. In its report prepared for that meeting, MINUGUA said the organized private sector shares the responsibility for inadequate social budgets because it systematically opposes efforts to increase taxes, thereby limiting funding available for key social ministries and institutions of justice.

President Berger says signing a free-trade agreement with the United States is a top priority and that he plans to stimulate the economy by encouraging private investment. His campaign was supported by coffee and sugar producers, and several members of his cabinet are from the business sector.

## Human Rights

Guatemala endured a 36-year civil war which ended in 1996 with the signing of the “Accord for a Firm and Lasting Peace,” signed by then-President Alvaro Arzu (1996-2000)<sup>11</sup>, and the Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca, URNG). The Peace Accords incorporated 10 other previously negotiated agreements, the first of which was the Comprehensive Agreement on Human Rights. The latter was signed and became effective in 1994.

The Peace Accords established a Historical Clarification Commission, commonly referred to as The Truth Commission, to investigate human rights violations and acts of violence that occurred during the armed conflict from 1960 to 1996. In its 1999 report, “Guatemala: Memory of Silence,” the Commission reported that more than 200,000 people died or disappeared because of the armed conflict, and that over 80 % of the victims were indigenous Mayans. The Commission concluded that the systematic direction of criminal acts and human rights violations at the civilian Mayan population amounted to genocide. The Commission attributed responsibility for 93 % of the violations to agents of the state, principally members of the army, and said that, “The majority of human rights violations occurred with the knowledge or by order of the highest authorities of the State.” The Commission concluded that, although much of the state’s actions were taken in the name of counterinsurgency efforts, “The magnitude of the State’s repressive response” was “totally disproportionate to the military force of the insurgency...,” and that the vast majority of the state’s victims were not guerrilla combatants, but civilians.<sup>12</sup>

Through that first Peace Accord in 1994, the Comprehensive Agreement on Human Rights, Guatemala requested a U.N. mission to verify human rights and compliance with the commitments of that agreement. The United Nations Verification Mission in Guatemala (MINUGUA) was established in the country soon after, and regularly issues reports and recommendations based on its findings. In the fall of 2003, MINUGUA was extended for another year. It will now be supported by a U.N. Human Rights Commission, which the Guatemalan government approved in December 2003. On January 7, 2004, Guatemala and the U.N. agreed to establish an “Investigating Committee on Illegal Security Corps and Clandestine Organizations,” an agreement endorsed by then-President-elect Berger.

## Guatemala’s Legal Obligations Regarding Human Rights

Guatemala’s commitment to respect human rights is spelled out in various internal laws and international accords to which it is a party. The 1996 Peace Accords included the Comprehensive Agreement on Human Rights, which was the only agreement to go into effect when it was signed, in 1994, rather than when the

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<sup>11</sup> Arzu was elected Mayor of Guatemala City, the nation’s capital, in the November 2003 elections. He held the post prior to becoming president in 1996. He is a member of the opposition party PAN.

<sup>12</sup> Commission for Historical Clarification, *Guatemala: Memory of Silence*, Conclusions and Recommendations, at [<http://shr.aaas.org/guatemala/ceh/report/english/toc.html>].

final Peace Accord was signed. In the Human Rights Agreement, the government of Guatemala committed to protect the “full observance of human rights;” to strengthen institutions for the protection of human rights; to take firm action against impunity in respect to human rights violations; to ensure there are no illegal security forces or clandestine security apparatus, and to regulate the bearing of arms.<sup>13</sup>

In the Guatemalan national constitution, adopted in 1985, Title I states that it is the state’s duty to guarantee to its inhabitants “life, liberty, justice, security, peace, and the integral development of the person.” Title II covers “Human Rights.” This section establishes basic civil and political rights, including the right to life, “liberty and equality,” and due process of the law. It also establishes the principle that, in the area of human rights, international treaties and conventions ratified by Guatemala “have precedence over municipal law.”<sup>14</sup> The law of Amparo, Habeus Corpus, and Constitutionality seeks to ensure “adequate protection of human rights and the effective functioning of the guarantees and protections of the constitutional order.”<sup>15</sup>

Guatemala is a member state of the Organization of American States. Within that system, Guatemala’s obligations to respect human rights stem from the OAS Charter, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights, which Guatemala ratified in 1978. Guatemala accepted the jurisdiction of the Inter-American Court in 1987. Guatemala is also a party to other regional human rights agreements, such as the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. International obligations stem from the Universal Declaration of Human Rights, and conventions such as the Covenant on Economic, Social and Cultural Rights.

## **Guatemalan Government Actions to Promote Respect for Human Rights**

Analysts agree that from the signing of the Human Rights Agreement in 1994 through mid-1998, respect for human rights improved steadily. Since then, however, the U.N. and other groups have reported a deterioration in human rights conditions, with a sharp increase in human rights violations as the November 2003 elections approached. On the positive side, observers point out that the armed conflict is definitively ended; and the state policy of human rights abuses during that conflict has been terminated. Sectors of society previously excluded from political processes have been able to participate. Institutional reforms have been initiated. On the other hand, all of these processes remain to be deepened and consolidated, in the view of

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<sup>13</sup> U.N. General Assembly, Security Council Doc. A/48/928, S/1994/448, *Letter dated 8 April 1994 from the Secretary-General to the President of the General Assembly and to the President of the Security Council*, Comprehensive Agreement [on] Human Rights, Apr. 19, 1994.

<sup>14</sup> Gilbert H. Flanz, ed. *Constitutions of the Countries of the World*, Guatemala, Booklet 3, Oceana Publications, Inc., Dobbs Ferry, NY, Jan. 1997.

<sup>15</sup> Inter-American Commission on Human Rights (IACHR), *Fifth Report on the Situation of Human Rights in Guatemala*, Organization of American States, Apr. 6, 2001, ch. I, p.4.

many. Strengthening of civilian power over military forces is progressing slowly or not at all; security forces reportedly continue to commit gross violations of human rights with impunity; and Civilian Defense Patrols (PACs), which were responsible for many human rights violations during the civil conflict, have re-emerged.

An important policy change made first by President Arzu, and continued by President Portillo, was to acknowledge the human rights violations committed by the state, and the deficiencies in the state allowing those violations to occur. Both Administrations also committed to taking action to correct those deficiencies in order to improve human rights conditions. Upon taking office in January 2000, President Portillo embraced the Peace Accords and declared them to be state policy for his Administration. He has also acknowledged the state role in prominent human rights cases that have come up since he took office. According to the Inter-American Commission on Human Rights,

The [Guatemalan] State acknowledges that the systems for public security and the administration of justice are gravely deficient. Among the problems identified by the State itself are abusive and arbitrary action by the police forces; the lack of institutional capacity to investigate and prosecute crime, especially when committed by State agents; and serious deficiencies in due process and the administration of justice.<sup>16</sup>

The Portillo Administration ratified international human rights instruments, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador," in October 2000. The Portillo Administration was praised by both the Inter-American Commission on Human Rights (IACHR) and the U.N. Verification Mission in Guatemala for its positive approach in dealing with human rights cases before the IACHR. In cases addressed during his term, Portillo's Administration recognized the state's "institutional responsibility" for the specified human rights violations, said it would undertake to comply with the IACHR's recommendations, and that it would pursue the friendly settlement of these and other cases. Nonetheless, MINUGUA qualified its praise with the observation that "these significant initiatives have not had any substantive impact on the overall enjoyment of human rights in the population's daily life."<sup>17</sup>

Upon taking office in January 2004, President Berger said he would adhere strictly to the Peace Accords and appointed several people who have played important roles in negotiating or promoting the Accords. His Vice-President, Eduardo Stein, was the government's lead negotiator in 1996. His top advisor on security policy is retired General Otto Perez, who signed the Peace Accords on behalf of the army. Berger appointed indigenous leader Rigoberta Menchu, winner of the 1992 Nobel Peace Prize, as a "goodwill ambassador to the accords" to help oversee their implementation.

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<sup>16</sup> IACHR, *op.cit.*, p. 1.

<sup>17</sup> U.N. Verification Mission in Guatemala - MINUGUA, *Report of the United Nations Verification Mission in Guatemala (MINUGUA) for the Consultative Group meeting for Guatemala*, Guatemala, Jan. 18, 2002, p.5.

## Current Human Rights Conditions

The United Nations Verification Mission in Guatemala, the OAS Inter-American Commission on Human Rights, and the U.S. Department of State all have expressed concern that government actions have not matched its repeated pledges, and that the government of Guatemala has taken only limited steps to improve respect for human rights within the country. Human rights conditions improved for the first year and a half following the signing of the Peace Accords, but several human rights organizations have reported a worsening of conditions since then.

An evaluation of the overall human rights situation in Guatemala must take account of the end of the internal armed conflict and the end of institutional policies that violate human rights, which have brought a qualitative and quantitative improvement. However, it should also be borne in mind that there has been a significant polarization in the internal political debate under the [Portillo] Government and at the same time there have been isolated, specific cases of limited duration of constitutional rights being suspended, although they did not result in any irreversible deterioration in the enjoyment of civil rights....[T]he steady progression of significant improvements in the human rights situation from [1994] until mid-1998 has given way to stagnation and signs of deterioration...<sup>18</sup>

In their discussion of worsening human rights conditions, human rights groups have pointed out several areas of concern:<sup>19</sup>

**Failure To Adhere To Implementation Timetable.** According to the timetable originally agreed upon to implement the Peace Accords, many government actions were to have taken place by 2000. These pending commitments were rescheduled to occur between 2001 and 2004. The Consultative Group for Guatemala, which comprises foreign donor countries and international institutions that have supported Guatemala's peace process, called on the Portillo Administration to reinvigorate the peace process in February 2002. A year later, however, the U.N. characterized implementation of the accords as "disappointing" in a report to the Consultative Group, noting that advances made were modest in comparison to the "vast backlog" in the accords' implementation, and that the "very breadth and complexity of the peace commitments demands high levels of political will and management capacity" on the part of the government.

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<sup>18</sup> Ibid, pp.4-5.

<sup>19</sup> These summaries of issues are drawn from: MINUGUA, op.cit., and *Executive Summary MINUGUA Report to the Consultative Group Meeting for Guatemala*, May 7, 2003; IACHR, op.cit., and *2002 Annual Report, chapter V: Guatemala*, Mar. 2003; U.S. Dept. of State, *Country Reports on Human Rights Practices, 2001 and 2002: Guatemala*, Mar. 4, 2002, and Mar. 31, 2003; *Amnesty International Report 2001: Guatemala*; Human Rights Watch, *Guatemala: Stop Violence and Intimidation against Rights Advocates*, press release, May 1, 2002, and *Guatemala: UN Visit Should Advance Investigative Commission*, press release, July 22, 2003.

**Demilitarization and the Strengthening of Civilian Power.** Some progress in demilitarizing the country and strengthening civilian power has been made, such as disbanding the Estado Mayor Presidencial, or Presidential Guard unit, known for its human rights abuses, and closing outdated military installations. Failure to demilitarize the state remains a serious problem, however. MINUGUA reported in 2003 that then-President Portillo violated the spirit of the Peace Accords, which call for demilitarization of the police, by expanding the role of the army in law enforcement functions and other areas of government, rather than separating the functions of the army and of the National Civil Police. The National Civilian Police Academy's budget was reduced, further weakening the force.

Excesses in the military budget and the lack of budget transparency are reported as persistent problems. Under the accords, funds were to be directed away from the military and into the underfunded health, education and police sectors. The government met the target for reduction of the military budget in 1997 and 1998, but beginning in 1999, the military budget began to exceed the ceiling of 0.66 % of GDP set by the Peace Accords. In 2001, the Portillo Administration carried out extraordinary supplemental transfers to the Defense Ministry, raising the budget to 0.94% of GDP, and increasing the allocation originally approved by the Guatemalan Congress by 85%. In 2002, two supplemental transfers again increased the army's budget above the targets established in the Peace Accords. MINUGUA warned that this increased military spending was siphoning funds that should be used for social spending.

In the 1994 Human Rights Agreement, the government committed to ensuring that there are no illegal security forces or clandestine security apparati. President Portillo promised to dismantle these structures, which interfere with the administration of justice, within six months of taking office, but failed to do so by the end of his term. He cooperated in mid-2003, however, with the U.N. in forming a commission to investigate these parallel, clandestine structures. Although the Portillo Administration complied with another part of the accords by presenting a new defense policy, important elements of it have not yet been implemented. For example, no tangible progress has been made in creating a civilian intelligence system to regulate or supervise intelligence agencies.

Other observers expressed concern about the renewed prominence of retired General Efraín Ríos Montt as a reflection of the ongoing difficulty in asserting civilian power over the military and in addressing military impunity for past human rights violations. (See discussion of Ríos Montt in "November 2003 Elections" above.) Ríos Montt exerted considerable influence in gaining the right to run for President but was soundly defeated in the 2003 elections. President Berger has avoided saying whether he will allow legal proceedings for crimes against humanity to proceed against Ríos Montt. Two of the people appointed to his administration, Frank LaRue as head of the Presidential Human Rights Commission, and Rigoberta Menchu, have sought prosecution of Ríos Montt.

**Continued Impunity for Human Rights Violations.** MINUGUA has identified impunity, or failure to prosecute abusers, as the main obstacle to the effective enjoyment of human rights since it began reporting in 1994, and, in its report issued in January 2002, "notes with profound concern that it is an entrenched

phenomenon.” The main factors said to contribute to this continued impunity are an ineffective administration of justice, and failure of the government to investigate and punish human rights offenders. Although the government attained convictions in a few important human rights cases, most human rights cases were not investigated for long periods of time, or experienced lengthy delays in the ineffective judicial process. High level officials have allegedly covered up or obstructed efforts to investigate human rights violations. Advances made in addressing impunity were often reversed. For example, three military officers were convicted in 2001 of the murder of Bishop Juan Jose Gerardi, who headed the Archbishop’s Human Rights Office, and was murdered in 1998, two days after the Church’s critical *Recuperation of the Historical Memory* report on past human rights violations was issued. Their 30-year, noncommutable sentences were annulled, however, and a retrial ordered, by an Appeals Court in 2002. The judicial process used to reach that decision was challenged, and the Supreme Court ruled in 2003 that the Appeals Court must re-examine the appeals.

**Continued Gross Violations of Human Rights by Security Forces.**

Guatemalan security forces continued to commit serious human rights violations in 2002, including extrajudicial killings and torture, according to the State Department human rights report for that year. From 2001 to 2002, there was a reported increase in attempted lynchings, some with the participation of local leaders, former Civil Defense Patrol members, or, at an increased rate, municipal officials. The number of deaths from lynchings decreased, according to the State Department, due to the improved efforts of the police to intervene.

**Continued Existence of Clandestine Security Units.** Both the IACHR and MINUGUA express concern over consistent reports that clandestine and illegal security units and structures continue to exist and have participated in acts of intimidation and lynchings. A United Nations team began helping Guatemala create a Commission of Investigation into Illegal Groups and Clandestine Security Apparatuses (CICIACS) in July 2003. The commission has been endorsed by the government, the human rights ombudsman, and civil society groups in Guatemala. Under an agreement signed in January 2004, the U.N. will appoint the commission, which will investigate, arrest, and prosecute people linked to illegal and clandestine security organizations and suspected of human rights violations.<sup>20</sup>

**Climate of Intimidation.** Various human rights observers have reported an increased climate of intimidation over the past two years. Human rights activists have been threatened and attacked. Although many of the threats have been against human rights activists, judicial officials, trial witnesses, journalists, and labor organizers have also been targets of intimidation. According to the State Department, parallel investigations, the obstruction of justice, threats and intimidation were traced to groups related to the Guatemalan government.

**Revival of Civilian Defense Patrols.** According to the Guatemalan Truth Commission, the Civilian Defense Patrols (PACs) were responsible for many human rights violations during the civil conflict. According to the Inter-American

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<sup>20</sup> “Guatemala: U.N. to Get Free Hand in Justice System,” *Latinnews Daily*, Jan. 9, 2004.



Commission on Human Rights, the reorganization of these groups has become a “new cause for insecurity and instability in rural areas and is seriously threatening the Peace Accords, the reconciliation process, and the rule of law.” The Portillo administration decided to provide compensation to former PAC members in 2002, in what many saw as an effort to garner votes. Guatemala’s highest court ruled in December 2003 that the payments, authorized by presidential decree, were unconstitutional. Portillo agreed to pay 455,000 ex-combatants about \$660 each in three installments. The first payment was made, but the court’s decision blocks disbursement of the other two payments scheduled for 2004.

**Inequitable Distribution of Wealth and Social Spending.<sup>21</sup>**

Distribution of income and wealth remains highly skewed in Guatemala. According to a recent World Bank report, Guatemala ranks among the more unequal countries of the world, with the top fifth of the population accounting for 54% of total consumption. Indigenous people constitute close to half the population, but account for less than one-fourth of total income and consumption. The Peace Accords call for investment of the national budget into education, health and other social sectors in order to create more equitable distribution of wealth, reduce poverty and improve socioeconomic conditions. Estimates of the portion of Guatemala’s population living in poverty vary: the U.S. State Department reports that 80% of Guatemalans live in poverty, with two-thirds of that number living in extreme poverty. The World Bank reports that 54% of the population lives in poverty, with indications that poverty has increased slightly in 2001-2002.<sup>22</sup> Poverty is highest in rural areas and among the indigenous: 75% of all people living in the countryside live in poverty, 25% in extreme poverty, according to the World Bank.

Social indicators such as infant mortality and illiteracy are among the worst in the hemisphere; malnutrition rates are among the worst in the world. MINUGUA reported in 2003 that there were slight improvements for social programs in the national budget over the previous year, but that the amounts allocated to key social ministries “remained extremely low in relation to the needs of the country.”

**Respect for Indigenous Rights.** The indigenous Mayans, who represent at least half of Guatemala’s population, are economically and socially marginalized and subject to significant ethnic discrimination. Poverty is significantly higher among indigenous people, 76% of whom are poor, in contrast to 41% of non-indigenous people. Throughout the Peace Accords, there are provisions seeking to reverse the historical exclusion of indigenous people, and of women. In signing them, the government agreed to implement a more inclusive development strategy; reduce poverty; improve living conditions of the poor; and increase access to education, health, and other social services. The Portillo Administration outlined a poverty reduction strategy in 2002 addressing most of those issues.

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<sup>21</sup> Socio-economic data in this and the subsequent section are primarily from *Guatemala Poverty Assessment*, The World Bank, Feb. 2003; *Background Note: Guatemala*, U.S. Dept. of State, Sept. 2003; and IACHR Mar. 2003, op. cit.

<sup>22</sup> The difference in the figures is probably due to methodology.



Implementation of the elements of the Peace Accords relating to improving respect for the identity and rights of indigenous people are far behind schedule, however. Access to education, according to the Inter-American Commission on Human Rights, is “still far from becoming a reality.” The average level of schooling among the poor is less than two years; schooling is lowest among women, indigenous people, and the rural poor. The indigenous and women continue to face limited opportunities and discrimination in the labor market. According to the World Bank’s Poverty Assessment, “The indigenous appear limited to lower-paying jobs, primarily in agriculture,” which, the report says, is “unlikely to serve as a major vehicle for poverty reduction.” Other obstacles hindering social and economic advancement among the indigenous poor, which the report says the government still must address, are: higher malnutrition rates, less coverage by basic utility services, wage discrimination, and discriminatory treatment by public officials and other service providers.

## Relations With the United States

U.S. policy objectives in Guatemala include strengthening democratic institutions and implementation of the Peace Accords; encouraging respect for human rights and the rule of law; supporting broad-based economic growth, sustainable development, and mutually beneficial trade relations; combating drug trafficking; and supporting Central American integration through resolution of territorial disputes. Relations between Guatemala and the United States have traditionally been close, but strained at times by human rights and civil-military issues. The Bush Administration repeatedly expressed concerns over the failure of the Portillo Administration to implement the Peace Accords, a perceived high level of government corruption, and lack of cooperation in counter-narcotics efforts.<sup>23</sup> Arriving for the new President’s inauguration, Florida Governor Jeb Bush remarked, “... we have confidence that we will work very closely with the administration of Oscar Berger to forge a better future for the people of the United States and Guatemala.”

## U.S. Assistance

From 1997 through 2003, U.S. assistance to Guatemala centered on support of the Peace Accords, providing almost \$400 million to support their implementation. There is no longer a project in direct support of the Implementation of the Peace Accords as of FY2004. Some activities, such as the development of justice centers, and efforts to support increased transparency of Guatemalan government institutions, and to reduce corruption, will continue in USAID’s Democracy, Conflict and Humanitarian assistance programs. U.S. assistance to Guatemala has declined by over a third in the past three years, from almost \$60 million in FY2002, to \$38

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<sup>23</sup> See, for example, testimony of U.S. officials at hearing on *Drug Corruption and Other Threats to Democratic Stability in Guatemala and the Dominican Republic*, before House Committee on International Relations’ Subcommittee on the Western Hemisphere, Oct. 10, 2002; and Ambassador Michael Kozak, State Dept. Bureau for Democracy Human Rights and Labor, Congressional Human Rights Caucus Members’ Briefing: *Guatemala: A Human Rights Update*, Oct. 16, 2003.

million requested for FY2005. The request for FY2005 includes \$9.7 million in Child Survival and Health Programs funds; \$6.6 million in development assistance, \$4 million in Economic Support funds, and \$17.6 million in P.L. 480 Title II food assistance programs.

In the conference report for the FY2004 omnibus appropriations bill (H.Rept. 108-401), Congress criticized the Administration's strategy of reducing staffing and funding for Guatemala for FY2004, saying it would "limit the ability of the United States to be responsive at this critical juncture in Guatemala's history." (See "Legislation in the 108<sup>th</sup> Congress" below.) In recent years Congress has asked federal agencies to expedite the declassification and release of information related to the murder of U.S. citizens in Guatemala.

USAID's regional Central America Program, which provides from \$20-\$30 million per year, is based in Guatemala. This program works in conjunction with other U.S. embassies and USAID missions in the area to support four main goals: promotion of free trade; expansion of Central American natural resources management and conservation; advancement of regional HIV/AIDS services and information; and rural diversification to enhance incomes.

### **U.S. Prohibition on Military Assistance to Guatemala**

From the inauguration of a democratically-elected government in 1986 to 1990, Congress placed conditions related to democratization and improved respect for human rights on military assistance to Guatemala, and prohibited the purchase of weapons with U.S. funds. In 1990, the George H. Bush Administration suspended military aid because of concerns over human rights abuses allegedly committed by Guatemalan security forces, especially the murder of a U.S. citizen. Congress has continued to prohibit foreign military financing to Guatemala since then, although it has allowed International Military Education and Training (IMET) assistance. Currently, Congress allows Guatemala only expanded IMET, which is training for civilian personnel in defense matters, and requires notification to the Appropriations Committees prior to allotment.

The Berger Administration has lobbied Washington to ease the military aid prohibition, noting that within its first six months in office it had reduced the size of the military by half and developed proposals for other military reforms. The government says it needs funds to modernize the military and provide equipment for border protection and counternarcotics efforts. While applauding the reduction in forces, some human rights groups say that other reforms required by the Peace Accords, such as adopting a military doctrine limiting the military to external defense, have not yet been enacted. They also express concern about continued human rights abuses, impunity for such offenses, and corruption among current and former military officials. Furthermore, the proposed U.N. Commission for the Investigation of Illegal Armed Groups and Clandestine Security Organizations (CICIACS) has still not been formed. CICIACS, which would investigate and prosecute clandestine groups, through which many military officers allegedly engage in human rights violations, drug trafficking, and organized crime, was approved by the Portillo Administration, and has yet to be approved by the Guatemalan Congress. Some human rights groups argue that the U.S. ban on military aid should not be lifted

until these and other reforms are carried out, and others not until reparations are made to civilian victims of the armed conflict.<sup>24</sup>

## U.S. Trade and Investment

Guatemala and the United States signed a framework agreement on trade and investment in 1991, through which they established a bilateral Trade and Investment Council. The signing of the Guatemalan Peace Accords in 1996 removed a major obstacle to foreign investment there. Guatemala was certified to receive export trade benefits in 2000 under the Caribbean Basin Trade and Partnership Act (P.L.106-200, Title II), which gives preferential tariff treatment, and also benefits from access to the U.S. Generalized System of Preferences. The United States is Guatemala's top trade partner. Guatemala's primary exports are coffee, sugar, bananas, fruits and vegetables, cardamom, meat, apparel, petroleum, and electricity; 55.3% of Guatemalan exports go to the United States. Primary import commodities are fuels, machinery and transport equipment, construction materials, grain, fertilizers, and electricity; 32.8% of Guatemalan imports are from the United States.<sup>25</sup> The U.S. trade deficit with Guatemala was \$758 million in 2002, with U.S. exports to Guatemala at \$2.0 billion, and U.S. imports from Guatemala at \$2.8 billion. Guatemala is the 40<sup>th</sup> largest export market for U.S. goods.

U.S. foreign direct investment in Guatemala was \$907 million in 2000 and dropped by almost half, to \$477 million, in 2001; it is concentrated in the manufacturing and finance sectors.<sup>26</sup> President Berger has made attracting domestic and foreign investment, which his administration believes will revive the economy and create jobs, a priority.

## The Central America Free Trade Agreement with the United States

The Guatemalan government supports a Dominican Republic and Central America Free Trade Agreement (DR-CAFTA) with the United States as a further step toward economic revival and economic integration with its neighbors. It established a free trade area with El Salvador, Honduras, and Nicaragua in 1993, to which the Dominican Republic was later added. Negotiations to add Chile to the group are underway. Along with El Salvador and Honduras, Guatemala implemented a free trade agreement with Mexico in 2001. Guatemala signed a customs agreement with El Salvador in March 2004 as part of a strategy to improve trade within the region.

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<sup>24</sup> "Vice President Eduardo Stein Meets with U.S. Officials this Week to Discuss Military Funding," Guatemala Human Rights Commission/USA, July 19, 2004. Also, "WOLA Opposes Renewing Military Assistance to Guatemala (sic), As Guatemalan Vice President Visits Washington," Washington Office on Latin America, July 19, 2004.

<sup>25</sup> Figures for 2001, *The World Factbook*, "Guatemala." Central Intelligence Agency, updated August 1, 2003.

<sup>26</sup> U.S. Trade Representative, *2003 National Trade Estimate Report on Foreign Trade Barriers*, "Guatemala," p. 140.

Some supporters of DR-CAFTA argue that the agreement will help farmers, especially those who grow non-traditional crops not grown in the United States. They also argue that it will help slow migration to the United States of Central American farm laborers seeking work. Even the Central American governments expressed fear, however, that small subsistence farmers will be unable to compete against subsidized, and therefore lower-priced, U.S. commodities. They wanted to negotiate the elimination of U.S. farm subsidies as part of CAFTA talks but acquiesced to the U.S. position that the issue should be addressed in the World Trade Organization. Others express concern that if small farms producing basic foods fail due to competition from U.S. imports, already high malnutrition and unemployment rates will rise even further.<sup>27</sup> They argue that staple crops such as corn, rice, and beans should therefore be excluded from trade agreements. The Central American governments agreed to include all of these staple food crops in the concluded agreement, however. The agreement establishes quotas on sensitive agricultural commodities imported from the U.S. that will increase over time; by the year 2020, most quotas and tariffs will be eliminated. White corn, however, will receive some protection in perpetuity. Although a quota on U.S. white corn imports will increase annually, the high tariffs on white corn imports above the quota level will remain in place indefinitely.

Some U.S. industries have also criticized the trade agreement. U.S. sugar growers argue that including sugar in DR-CAFTA will harm the domestic industry and say that they will work to defeat DR-CAFTA.<sup>28</sup> Guatemala wanted the quota for sugar to be expanded under CAFTA. As concluded, the agreement establishes an additional quota of 32,000 metric tons for Guatemala — one-third of the additional access granted to the five Central American countries — for sugar exported to the United States. Because certain benefits for the textile industry in Guatemala would become permanent under DR-CAFTA, some U.S. producers have objected to it, saying it will harm their businesses.

Supporters of DR-CAFTA say it will generate new jobs. Some Members of Congress have expressed concern, however, that labor rights are inadequately protected by the agreement. Legally, Guatemalans' right to freedom of association and to form and join trade unions are protected by the Constitution and the Labor Code. Practically, however, those rights are inadequately protected by the government, according to the State Department's 2003 Human Rights report. Critics argue that the labor provisions under DR-CAFTA are less stringent than those currently in place under U.S. preferential trade arrangements. Under DR-CAFTA, argue critics such as the AFL-CIO, governments would only be required to enforce their existing, flawed laws, but not to reform laws to meet international labor standards. Advocates of DR-CAFTA argue that accompanying technical cooperation programs will help improve the enforcement of labor laws in the region. While acknowledging the importance of such technical assistance, the AFL-CIO maintains

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<sup>27</sup> "Trade and the Rural Sector," in *Fair Trade or Free Trade? Understanding CAFTA, An Educational Briefing Packet*, Washington Office on Latin America.

<sup>28</sup> For further information on agricultural issues, see CRS Report RL32110, *Agricultural Trade in a U.S.-Central American Free Trade Agreement (CAFTA)*, and CRS Issue Brief IB95117, *Sugar Policy Issues*, by Remy Jurenas.

that it is insufficient to “change deep-seated indifference and hostility towards workers’ rights.”

In response to such criticism, Central American labor and trade ministers met in Washington in July 2004, to reaffirm their countries’ commitment to strengthening labor rights. The ministers announced the formation of a working group that will develop specific recommendations for each country and the region to take to strengthen compliance with labor laws. The group, to be led by the Vice Ministers, will also identify areas in need of reform, and consult with employer and labor groups in the process. Stating that the “labor dimension is critical to passing CAFTA,” Guatemalan Trade Minister Marcio Cuevas said, “we are fully committed to taking the actions now that are necessary to strengthen our record of compliance and enforcement.”<sup>29</sup> The ministers said they will meet again in October to discuss implementation of the recommendations.

The U.S. government, international organizations, and independent watchdog organizations have criticized Guatemala for extensive corruption, which allegedly increased under the Portillo Administration.<sup>30</sup> The Bush Administration called corruption “the number-one obstacle to increasing the effectiveness of all USG[ovt.] programs in Guatemala.” A recent World Bank report listed Guatemala as one of nine countries that regulate businesses the most heavily. The report concluded that those countries also had the weakest systems for enforcing the laws and were therefore susceptible to bribery and corruption as well.<sup>31</sup> Transparency International said Guatemala was perceived as the 33<sup>rd</sup> most corrupt country out of 133 countries in 2003. According to U.S. government reports, “corruption is a serious problem that companies may encounter at nearly any level,” in Guatemala, and that has tended to be most pervasive in customs transactions. A semi-autonomous Superintendency of Tax Administration was established in 1999 to improve customs operations, but apparently corruption has increased instead. In 2001, Guatemala ratified the Inter-American Convention against Corruption. President Berger has made improving governance and attacking corruption priorities. His administration introduced a code of ethics for cabinet members and is actively investigating corruption under the previous government.

(For a more detailed discussion, see the section on Guatemala in CRS Report RL32322, *Central America and the Dominican Republic in the Context of the Free Trade Agreement (DR-CAFTA) with the United States*, K. Larry Storrs, Coordinator.)

<sup>29</sup> “First Ever Meeting of Central American and Dominican Republic Trade and Labor Ministers Vow [sic] Progress on Labor Standards: Passage of CAFTA Cited as Essential,” press release, Ministries of Trade and Labor of Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. July 13, 2004.

<sup>30</sup> Sources include Hearing on *Drug Corruption and Other Threats to Democratic Stability in Guatemala* ... op. cit., testimony of Asst. Sec. Of State for Western Hemisphere Affairs Otto Reich; Transparency International Corruption Perceptions Index 2003, at [http://www.transparency.org/cpi/2003/cpi2003.en.html]; *Guatemala Country Commercial Guide* op. cit.; U.S. Trade Representative, op. cit.

<sup>31</sup> “Poor Nations Have Most Business Red Tape- World Bank,” Reuters News, Oct. 7, 2003.

## Narcotics

Guatemala is a major drug-transit country for both cocaine and heroin en route from South America to the United States and Europe. According to the State Department's 2003 International Narcotics Control Strategy Report, up to half of all cocaine on its way to Mexico and the United States passes through Guatemala, the preferred country in Central America for the storage and consolidation of northward bound cocaine. In its March 2004 report, the Bush Administration reported that "In spite of improvements in the Government of Guatemala's counternarcotics efforts in 2003, large shipments of cocaine continue to move through Guatemala by air, road, and sea." In January 2003, President Bush designated Guatemala as one of three countries in the world that "failed demonstrably" during the previous year to fulfill its international counter narcotics obligations. He granted a national interest waiver to allow continued U.S. assistance to be provided to Guatemala, however.

Eight months later, in September 2003, the President determined that Guatemala had made efforts to improve its counter narcotics practices and did not include it in the "failed demonstrably" list. Among the steps taken were passage by the Guatemalan Congress in August 2003 of a measure allowing U.S. security forces to enter Guatemalan airspace and waters during joint counter narcotics operations or when in pursuit of suspected drug traffickers. The Financial Action Task Force, an international organization dedicated to enhancing international cooperation in combating money-laundering, removed Guatemala from its list of non-cooperative countries in July 2004.<sup>32</sup> Guatemala had been on the list of nine countries — the only one in the Americas — during the Portillo Administration.<sup>33</sup> The Task Force welcomed progress made by Guatemala in enacting and implementing anti-money laundering legislation.

Guatemala has a growing domestic drug abuse problem. According to the State Department, the Guatemalan government has an aggressive demand reduction program.

## Legislation in the 108<sup>th</sup> Congress

### **P.L. 108-7 (H.J.Res. 2)**

The Consolidated Appropriations Resolution for FY2003. In the Foreign Operations Appropriations act (Division E), Title III restricts military education and training for Guatemala to expanded international military education and training (IMET), meaning for civilian personnel only. Training funds for Guatemala may only be provided through regular notification procedures of the Committees on Appropriations. Prohibits Foreign Military Financing for Guatemala. Title IV, Sec.586 suggests that information relevant to the murders of Sister Barbara Ann Ford

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<sup>32</sup> "FATF Tackles Terrorism Financing, Delists Guatemala," Financial Action Task Force, July 2, 2004.

<sup>33</sup> Financial Action Task Force on Money Laundering, *Annual Review of Non-Cooperative Countries or Territories*, June 20, 2003. Paris, France.

and other American citizens in Guatemala since December 1999 should be investigated and made public. It gives the president a deadline of 45 days after the bill's enactment to order all federal agencies and departments to "expeditiously declassify and release to the victims' families" such information, and directs all federal agencies and departments to use the discretion contained within existing procedures on classification in support of releasing, rather than withholding, such information. Signed into law February 20, 2003.

**P.L. 108-199 (H.R. 2673)**

Foreign Operations Appropriations Act for FY2004 (H.R. 2800/S. 1426), incorporated into omnibus appropriations act. Prohibits Foreign Military Financing for Guatemala. Restricts military education and training for Guatemala to expanded international military education and training (IMET), meaning for civilian personnel only. Training funds for Guatemala may only be provided through regular notification procedures of the Committees on Appropriations. Prohibits reducing the number of USAID foreign service employees at each mission in Latin America except as provided through notification to the Committees on Appropriations.

Regarding USAID operations in Guatemala, the conference report (H.Rept. 108-401) states that Members do not believe the strategy of substantial staffing reduction in Guatemala (and Honduras and Nicaragua) reflects the priorities of U.S. economic, trade, humanitarian, and immigration policies with these countries. The report states further that "Guatemala specifically is struggling in a state of post-conflict polarization, and with the new January 2004 government, the managers strongly believe that reducing assistance and staffing would limit the ability of the United States to be responsive at this critical juncture in Guatemala's history."

Noting the success of a nutritional drink in reducing malnutrition among Guatemalan pre-school children, the report "encourages USAID to determine the feasibility of establishing a long-term child nutrition program targeted toward reducing severe malnutrition rates among Central American children."

The conference report also notes that (1) the conference agreement does not include the Senate's earmark of \$250,000 in Economic Support Funds to support the Commission to Investigate Illegal Groups and Clandestine Security Apparatus in Guatemala, but Congress strongly supports this effort "to investigate those responsible for the political violence and organized criminal activity that continues to hamper Guatemala's development and recommends that at least \$250,000 be provided to the Commission" in FY2004; (2) the conference agreement does not include the Senate section that would have directed all federal agencies and departments to use the discretion contained within existing procedures on classification in support of releasing, rather than withholding, information on the murders of Sister Barbara Ann Ford and other American citizens in Guatemala since December 1999. But Congress notes that in April 2003 the U.S. Attorney General ordered heads of U.S. agencies to set forth a written plan for the review of any relevant information they had regarding those cases for possible release to the victims' families and directs the Attorney General to provide to the Committees on Appropriations, within 60 days of the bill's enactment, copies of the written plans and descriptions of the progress made in implementing them; (3) the conference agreement does not include the Senate section requiring the Administration to report on the status of its strategy to address the international coffee crisis, but Congress notes its concern about the report's delay and that it expects it to be released in the



near future. Conference agreement for omnibus vehicle approved by House December 8, 2003, by Senate January 22, 2004. Signed into law January 23, 2004.

**H.R. 1300 (Davis)**

The Central American Security Act would amend the Nicaraguan Adjustment and Central American Relief Act to extend permanent resident status adjustment provisions to qualifying Salvadoran, Guatemalan, and Honduran nationals and revise the application filing deadline. Introduced March 17, 2003, referred to the House Subcommittee on Immigration, Border Security, and Claims May 5.

**H.R. 2534 (Lantos)**

The Human Rights Information Act would promote human rights, democracy, and the rule of law by providing a process for executive agencies for declassifying on an expedited basis and disclosing certain documents relating to human rights abuses in countries other than the United States. Requires each federal agency to identify, review, and organize all human rights records regarding activities occurring in Guatemala and Honduras for declassification and public disclosure. Introduced June 19, 2003, Referred to the Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census July 2.

**S.Res. 289 (Dorgan)**

Would express the sense of the Senate that the President should renegotiate CAFTA provisions relating to access to the U.S. sugar market so that the Central American signatories would have no greater access than they currently have and that sugar should not be included in any bilateral or regional free trade agreement. Introduced and referred to Senate Committee on Finance January 23, 2004.



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